

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

NICOLE L KLINE
Claimant

APPEAL NO. 12A-UI-15075-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KINSETH HOTEL CORPORATION
Employer

OC: 01/08/12
Claimant: Respondent (2-R)

Section 96.4-3 – Still Employed At Same Hours And Wages

STATEMENT OF THE CASE:

Kinseth Hotel Corporation filed a timely appeal from a representative's decision dated December 17, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits effective November 11, 2012. After due notice was provided, a telephone hearing was held on January 28, 2013. Although duly notified, the claimant did not participate. The employer participated by Ms. Jackie Nolan, Hearing Representative, and witness, Missy Jackson, Facility Manager.

ISSUE:

The issue is whether the claimant is still employed part time in the same hours and wages as agreed upon and in her base period.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Nicole Kline began employment with Kinseth Hotel Corporation on June 1, 2011. Ms. Kline was hired to work as a part-time housekeeper and was told at the time of hire there was no guarantee as to the minimum number of work hours she might be assigned to on any particular week. Claimant's working hours were dependent upon employer needs. Ms. Kline continues to be employed as a part-time housekeeper at the time of hearing and is paid by the hour. Claimant's immediate supervisor is Ruth Anderson.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant is still employed at the same part-time job at the same hours and wages contemplated in the original agreement of hire. It does.

871 IAC 24.23(26) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The evidence in the record establishes that Ms. Kline was hired in a part-time capacity with no guarantee as to the minimum number of hours she would be assigned each week. Claimant was also hired to be paid by the hour and continues to be paid at the same rate of pay or higher than originally agreed upon. As a part-time employee the claimant's hours have fluctuated due to business needs of her employer. Claimant, however, continues to be employed part time working with no guarantee as to a minimum number of hours and is paid at the same or higher rate than agreed upon at the time of hire.

For these reasons the administrative law judge concludes that the claimant cannot be considered to be partially unemployed as she is still employed part time at the same hours and wages contemplated in the original agreement of hire and in the claimant's base period with this employer. As there was no guarantee of the minimum number of hours the claimant would be assigned each week, there has been no change in the agreement of hire. The claimant's reduced work weeks are, therefore, no different than agreed upon by the parties in the original agreement of hire. Benefits are denied as of November 11, 2012.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a

continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated December 17, 2012, reference 01, is reversed. Claimant cannot be considered to be partially unemployed. Benefits are denied as of November 11, 2012. The claimant is still employed part time at the same hours and wages as contemplated in the original agreement of hire and in the claimant's base period with this employer. The issue of whether the claimant must repay any benefits received is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs